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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,799	09/18/2001	Peter A. Thayer	79-00-002 (014208.1393)	1048
5073	7590	02/08/2005	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			O CONNOR, GERALD J	
		ART UNIT	PAPER NUMBER	
		3627		

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/955,799

**Applicant(s)**

Thayer

**Examiner**

O'Connor

**Art Unit**

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on November 17, 2004 (Election).
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-45 is/are pending in the application.
  - 4a) Of the above claim(s) 1-20 and 31-45 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 21-30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on September 18, 2001 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3)<input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br/>Paper No(s)/Mail Date <u>2</u>.</li> </ol> | <ol style="list-style-type: none"> <li>4)<input type="checkbox"/> Interview Summary (PTO-413)<br/>Paper No(s)/Mail Date. _____.</li> <li>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6)<input type="checkbox"/> Other: _____.</li> </ol> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election without traverse of the invention of Group II, claims 21-30, in the reply filed November 17, 2004 is hereby acknowledged.
  
2. Claims 1-20 and 31-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed November 17, 2004.

### ***Claim Objections***

3. Claims 21-30 are objected to because of the following informalities: it appears that "the broadcast range" (claim 21, line 6) has no antecedent basis, since no particular inherent limit exists as to the range of transmission of the query. Therefore, for purposes of further consideration of the claims hereinbelow, the limitation will be disregarded. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

4. The following is a quotation of 35 U.S.C. 101:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 21-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 21-30 are drawn merely to the production and/or manipulation of non-functional descriptive material, therefore effecting no “useful, concrete, and tangible result.” Note that claims 21-30 read, for example, merely on a pictorial/graphic image of a flowchart, or, on a written/textual description of an algorithm, either of which document being printed on a sheet of paper/media). It has been held that such claims, even if the non-functional descriptive material is claimed in combination with a computer-readable medium (which claims 21-30 are not), are considered to comprise non-statutory subject matter, for merely manipulating an abstract idea. *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e)<sup>1</sup> the invention was described in--
  - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
  - (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

7. Claims 21-30 are rejected under 35 U.S.C. 102(a) as being anticipated by the admitted prior art, as described in the background of the invention on page 2 of the specification.

The invention, *as disclosed*, is an automated means for accomplishing the same results as had heretofore been accomplished by manual means. The conventional manual method is described in the background of the invention on page 2 of the specification. However, the invention, *as claimed*, requires no automated means, and thus reads on the underlying conventional process, by which it is therefore anticipated.

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<sup>1</sup> The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) apply to the examination of this application as the application being examined was (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) as amended by the AIPA (post-AIPA 35 U.S.C. 102(e)).

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to the disclosure.

9. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(703) 305-1525**, and whose facsimile number is **(703) 746-3976**.

The examiner can normally be reached weekdays from 9:30 to 6:00.

Inquiries of a general nature or simply relating to the status of the application should be directed to the receptionist, whose telephone number is **(703) 308-1113**.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Robert Olszewski, can be reached at **(703) 308-5183**.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (703) 872-9306** (fax-back auto-reply receipt service provided). Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be left with the receptionist on the seventh floor of Crystal Park Five, 2451 Crystal Dr, Arlington, VA 22202.

GJOC

February 4, 2005



(2-4-05)

Gerald J. O'Connor

Patent Examiner

Group Art Unit 3627